IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1634 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.N.BHATT
and
HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NARPATSINH HARISINH VANSIYA

Versus

AUTHORISED OFFICER AND CO OP OFFICER (MARKETING)

Appearance:

MR PK JANI for the Petitioners.
GOVERNMENT PLEADER for Respondent No. 1
HL PATEL ADVOCATES for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE J.N.BHATT
and
HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 22/04/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE J.N.BHATT)

The only short question which falls for our consideration and adjudication in this petition under Article 226 of the Constitution is as to whether the inclusion of names of electorals in the final list of voters without their names being in the preliminary list or revised list pursuant to Gujarat Agriculture Produce Market Rules, 1965 (For short "Rules") could be said to be legal and valid and permissible or not.

2. The petitioners have inter alia contended that the Director, Agriculture Marketing and Rural Finance, Gandhinagar by a notification published the election programme of Agricultural Produce Market Committee, Mandvi, Dist: Surat, for which the respondent no.1 claimed to be appointed Authorised Officer for the purpose of holding the election, who, in turn, published the preliminary list of voters, on 28th December, 2003, and after observing necessary procedure, published the revised list of voters and in both the lists, the names of the respondent nos. 2 and 3 were not included. Notwithstanding that, when the final list of voters came to be published, on 25th January, 2004, surprisingly, the names of respondent nos. 2 and 3 societies came to be included. Therefore, the petitioners made a representation to the Authorised Officer indicating that the inclusion of names of members of the Managing Committee of the respondent nos. 2 and 3 is contrary to the provisions of law and therefore, their names should be deleted from the final list of voters and since no decision has been taken, the petitioners were left with no alternative but to knock the doors of justice by invocation of the provisions of Article 226 of the Constitution of India.

3. The respondent authority has remained conspicuously silent. No affidavit-in-reply is filed. Nothing has been stated or indicated as to why the representation of the petitioner has not been dealt with and decided. We have heard the learned advocates appearing for the parties and taken into consideration the factual profile, as well as, relevant legal settings.

4. It becomes very clear from the record which has not been controverted or countered by the respondent authorities that the action of respondent no. 1 in including the names of respondent nos. 2 and 3 in the list of voters of agricultural constituencies of Agricultural Produce Market Committee, Mandvi without

following requisite procedure prescribed in the Rules. The Rules provide statutory mechanism, as to how, and when the names of electorates for a particular constituency could be included in the authorised list of voters. Any deviation resulting into the breach of the Rules for inclusion or deletion of the names in the voters' list will be invalid and unauthorised.

5. Part-II in the Rules is for publication of notification. Rule 3 provides for publication of notification, whereas Rule 4 provides for fixation of the date of election. Different lists of voters are required to be prepared pursuant to Rule 5 for the purpose of election for various constituencies. A person whose name is entered in a list of voters shall be qualified to vote in election to which the list of voters relates. Rule 7 whereas provides for preparation of list of voters in the general election.

6. Pursuant to the provisions contained in Rule 8, provisional and final publication of list of voters, procedure is statutorily prescribed. As soon as the list of voters is prepared under Rule 5, it is to be published by the Authorised Officer, in the manner provided in the Rules. It is required to be published by the Authorised Officer at the office of the Market Committee, as well as, at some conspicuous place in the market yard in the market area alongwith the notice stating that any person whose name is not entered in the list of voters and who claims that his name ought to be entered therein, or any person who is desirous that his name should be entered therein or any person who thinks that the names of other persons came to be wrongly entered therein, or have not been correctly included, has to apply to the Authorised Officer within a period of 14 days from the date of publication with a request for amendment of the list of voters provisionally shown.

7. The Authorised Officer, upon receipt of such applications, has to examine and publish a revised draft list of voters affixing a copy thereof on the notice board of Agricultural Produce Market Committee and some other conspicuous place in the principal market yard of the market area alongwith notice inviting objections against the inclusion of new names within a period of seven days from the date of publication of the revised list of voters for the purpose of amendment in the revised draft list of voters. The Authorised Officer has to decide the claims made in the applications received by him as an Authorised Officer and after taking decision, is obliged to prepare and publish a final list of voters

after making such amendments as may be necessary pursuant to the decision given by him on the applications, but final list has to be prepared, at least 30 days, before the date fixed for nomination of the candidates for the proposed election.

8. It could very well be visualised from the statutory mechanism provided under Rule 8 that the Authorised Officer appointed for the purpose in relation to a Market Committee before he publishes final list of voters has to follow the procedure prescribed in Rule 8. The conjoint reading of sub-rules (1) and (2) makes it quite evident that for the purpose of preparation of the final list of voters for the election of Agricultural Produce Market Committee, has to publish provisional list of voters followed by a revised draft list of voters upon considering and resolving the claims that may be received by him by the applicants and thereafter, he is obliged to publish a final list at least 30 days prior to the date fixed for nomination of candidates for the proposed election for Agricultural Produce Market Committee. The statutory checks and balances incorporated in the Rules are aimed and designed to see that the rightful persons entitled to vote are included and then who are not entitled to vote are deleted. It is a very important exercise of powers by the Authorised Officer and the duty of the Authroised Officer is provided in Rule 7. If a rightful voter is excluded or not included in the voters' list can approach the Authorised Officer for the inclusion during the process of publication of preliminary, as well as, revised draft list of voters. Again in the event of any name which has been included unauthorisedly, can be pointed out to the Authorised Officer and if he is satisfied, he has power to delete the names of such persons from the list of voters. A person whose name is entered in the list of voters finally, obviously, shall be qualified to vote at an election to which the list of voters relates unless he is seized to hold the capacity in which the name came to be included in the voters' list.

9. After a minor digression from the factual profile of the petition, let us see the main grievance voiced in this petition under Article 226 of the Constitution. The following aspects have emerged unquestionably from the record.

(1) The date of publication of notification 12th December,2003.

(2) The date of publication of preliminary list of voters under Rule 7(ii) of the Rules was fixed 28th December, 2003.

(3) The date of publication of revised list of voters was fixed 13th January, 2004.

(4) The date of publication of final list of voters was on 25th January, 2004.

10. The petitioners have mainly contended and have challenged the inclusion of respondent nos. 2 and 3 in the final list of voters though these societies were not included in the preliminary list of voters, as also in the revised list of voters. After having given anxious thoughts and consideration to the statutory mechanism provided for the inclusion of the names in the final list of voters and the settled proposition of law, we are of the opinion that the challenge is quite justified. The inclusion of names of respondent nos. 2 and 3 co-operative societies in the final voters' list published by the Authorised Officer for the purpose of holding an election from the agriculturists constituencies is violative of the Rule provisions as their names came to be included only in the final list without there being inclusion in the preliminary list of voters, as well, as in the revised list of voters.

11. We are of the clear view that direct inclusion of the names in the final voters' list without there being any scrutiny or consideration either in the preliminary list or in the revised draft list of voters to be prepared by the Authorised Officer is without any authority and not legal. Therefore, the inclusion of the respondent nos.2 and 3 co-operative societies in the final voters' list directly is in violation of the prescribed procedure under the Rules and, therefore, wrongful inclusion in the final voters' list the names of respondent nos.2 and 3 co-operative societies has to be declared invalid and unauthorised. It be noted that on behalf of the respondent nos. 2 and 3, there is no any contest or any affidavit-in-reply. We have no hesitation in finding that the inclusion of the names of respondent nos. 2 and 3 co-operative societies in the final voters' list for the election of Agricultural Produce Market Committee, Mandvi from the agriculturists constituencies, is unauthorised and without jurisdiction and their names are wrongly included and the decision of the Authorized Officer in including their names is unauthorised, invalid and without any legal sanction.

12. The view which we are inclined to take at this juncture is very much reinforced and supported by the following decision of this Court.

(1) In Desai Dharamsinhbhai Taljabhai and others vs.

Babulal Jethalal Patel, 30(3) GLR,1195 wherein the same proposition is highlighted in para-11.

(2) Similarly, this Court in Prahladbhai Shivram Patel and others vs. Director of Agriculture Marketing and Rural Finance, 1998(1) GLH,95, has also propounded and followed the same principle and it is further held that if an order which is being challenged is without jurisdiction or in violation of the statutory provisions alternative remedy is no bar for entertaining the petition under Article 226.

(3) This Court in Division Bench decision "in Mehsana District Co-operative Purchase and Sales Union Ltd. vs. Dhadhusan Beej Utpadak Rupantar and Vechan Karnari Sahakari Mandli Ltd., 1998(1) GLH, 170" upheld the view enunciated and propounded in Prahladbhai Patel's case (Supra) by dismissing the LPA.

13. In the result, the challenge against the inclusion of names of respondent nos. 2 and 3 co-operative societies in the final list of voters, without there being any scrutiny or inclusion in the preliminary or revised list of voters under the statutory mechanism of the Rules for the purpose of election of Agricultural Produce Market Committee, Mandvi, Ta: Mandvi, Dist: Surat, from the agriculturists constituencies is required to be upheld holding that the action of the Authorised Officer is without authority and invalid and ultra vires of his powers, and obviously, therefore, the names of the members of the Managing Committee of respondent nos. 2 and 3 societies shall not be entitled and eligible to participate in the election as voters. Their names shall stand deleted. The petition shall stand allowed. Rule made absolute with costs.

(J.N.Bhatt,J)

(D.N.Patel,J)

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